

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

KRWC CORPORATION, dba)
KOHALA RANCH WATER COMPANY)

DOCKET NO. 2008-0283

For Review and Approval of its)
Proposed Preferential Agricultural)
Potable Water Rate and Criteria)
for Bona Fide Agribusinesses)
Pursuant to Act 169, 2008 Session)
Laws of Hawaii, and Other)
Ratemaking Matters Including)
Without Limitation, Rate Increases,)
Revised Rate Schedules and Revised)
Rules.)

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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ORDER DENYING KOHALA BY THE SEA COMMUNITY ASSOCIATION'S
MOTION TO ENLARGE TIME AND DISMISSING MOTION TO INTERVENE

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2009 FEB 27 P 12: 21

FILED

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ORDER DENYING KOHALA BY THE SEA COMMUNITY ASSOCIATION'S
MOTION TO ENLARGE TIME AND DISMISSING MOTION TO INTERVENE

By this Order, the commission denies the Motion to Enlarge Time filed by Movant KOHALA BY THE SEA COMMUNITY ASSOCIATION ("Movant") on February 9, 2009, and dismisses the untimely Motion to Intervene filed on February 2, 2009, in response to the Application filed by KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY ("KRWC"),¹ on November 12, 2008.²

¹The Parties are KRWC and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). The STATE OF HAWAII ("State"), DEPARTMENT OF AGRICULTURE, is a participant, for the limited purpose of assisting the commission in establishing the requisite criteria for bona fide agribusinesses to qualify for the preferential water rate for agricultural activities, pursuant to Act 169, 2008 Session Laws of Hawaii. See Order Regarding Completed Application and Other Initial Matters, filed on December 8, 2008.

I.

Background

On November 12, 2008, KRWC filed its Application seeking an increase in its revenues of \$448,051 (approximately 23.9 percent) over its present total revenue requirement of approximately \$1,873,623, and of other related matters. The requested increase is based on an estimated total revenue requirement of \$2,321,684 for the 2009 calendar test year, and a rate of return of 8.85 percent.

On December 8, 2008, the commission issued its Order Regarding Completed Application and Other Matters, and on December 29, 2008, the commission issued its Protective Order.

On January 15, 2009, the commission held a public hearing at the Waimea Civic Center for the purpose of providing the public with the opportunity to comment on KRWC's requests.³ At least two members of the association submitted written

²Application; Exhibits KRWC 1 to KRWC 12; Exhibit KRWC-T-100; Attachment 1 to 3; Verification; and Certificate of Service, filed on November 12, 2008 (collectively, "Application"). See Order Regarding Completed Application and Other Initial Matters, filed on December 8, 2008 (the filing date of KRWC's complete Application is November 12, 2008).

³The commission's Notice of Public Hearing was published in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island, on December 24, 2008, January 7, 2009, and January 14, 2009. See Affidavits of Publication; and the Notice of Public Hearing. In addition, KRWC notified its customers of the public hearing by written notice mailed to each of the water utility's customers on December 9, 2008. See KRWC's letter, dated January 8, 2009. KRWC also held two informational meetings with its customers, on November 18, 2008 and December 18, 2008.

comments and appeared and testified at the public hearing.⁴ Pursuant to HAR § 6-61-57(1), the deadline for interested persons to timely file motions to intervene or participate was January 26, 2009.⁵

By letter dated January 27, 2009, the commission advised Movant as follows:

On January 26, 2009, the State of Hawaii Public Utilities Commission ("Commission") received an original plus ten copies of Kohala by the Sea Community Association's Motion to Intervene. Hawaii Administrative Rules § 6-61-24, which details all of the Commission's filing fees and can be viewed at www.hawaii.gov/budget/adminrules/har6-61.htm, states that a motion to intervene requires a \$15.00 filing fee.

Because your filing was deficient of the required filing fee, the Commission is unable to file and process your documents and is hereby returning them to your custody

Commission's letter, dated January 27, 2009, at 1.

By letter dated January 30, 2009, KRWC stated that based on the commission's January 27, 2009 letter, its understanding was that no motion to intervene was duly filed or was currently part of the docket record, and thus, no such "motion" was under consideration by the commission.

On February 2, 2009, Movant filed its Motion to Intervene. By its Certificate of Service attached to the motion, Movant certified that copies of its Motion to Intervene were

⁴Public hearing comments of Robert H. Sterne Jr. and Diana Bonnici.

⁵See also Notice of Public Hearing.

served upon KRWC's counsel and the Consumer Advocate by first class mail, postage pre-paid, on January 22, 2009.

By letter dated February 3, 2009, the commission instructed Movant as follows:

The Certificate of Service attached to the motion to intervene filed by Kohala By the Sea Community Association ("Association") on February 2, 2009, certifies that copies of the motion were served upon KRWC's counsel and the Division of Consumer Advocacy by first class mail, postage pre-paid, on January 22, 2009. Based on KRWC's certification, the deadline for KRWC and the Division of Consumer Advocacy to file oppositions to the motion to intervene, if any, expired on February 2, 2009, the filing date of the Association's motion with the Commission. Such a result is inconsistent with the Commission's procedural rules, HAR chapter 6-61.

Accordingly, please promptly: (1) serve copies of the Association's motion to intervene that was filed with the Commission on February 2, 2009, upon KRWC's counsel and the Division of Consumer Advocacy; and (2) file an Amended Certificate of Service, setting forth the manner and date of service, which will determine the deadline date for the filing of any oppositions to the motion to intervene filed by the Association on February 2, 2009.

Commission's letter, dated February 3, 2009, at 1 (footnotes, citations, and text therein omitted).

By letter dated February 2, 2009, filed on February 4, 2009, Movant responded to KRWC's January 30, 2009 letter, as follows:

This will serve to respond to a letter dated January 30, 2009 from counsel for the Applicant. A motion for intervention was filed with the PUC timely (received on January 26, 2009) but was inexplicably returned with a request for payment of \$15.00 for the filing fee. That filing fee and additional copies of the motion were immediately returned and the Motion should be considered retroactive to the date it was initially received

by the Commission. There are no rules authorizing Commission staff to "bounce" a timely filed motion, and the fee in any case has been paid so that no parties, and certainly not the Applicant, have been prejudiced.

Should the Commission determine that authority exists to ignore the filing that was made, and without in any way acknowledging that would be appropriate, this letter serves as our request for an extension of time to account for the inadvertent failure to include our \$15 check .

. . . .

Movant's letter, dated February 2, 2009, filed on February 4, 2009, at 1-2.

On February 9, 2009, Movant filed: (1) its Amended Certificate of Service, certifying that the Motion to Intervene "filed on February 2, 2009[,] that was mailed to the . . . named parties on January 22, 2009 . . . was mailed a second time" on February 6, 2009; and (2) its Motion to Enlarge Time, seeking to enlarge the time to file its Motion to Intervene "that was presented timely to the Commission on January 26, 2009 but was not formally filed until February 2, 2009, and to extend the time for such filing until the actual filing date of February 2, 2009."⁶

On February 10, 2009, KRWC filed its Memorandum in Opposition to Movant's Motion to Enlarge Time and Motion to Intervene ("Memorandum in Opposition").

On February 11, 2009, the commission approved and issued the Stipulated Procedural Order proposed and submitted by the Parties on February 4, 2009, to govern the issues,

⁶Motion to Enlarge Time, at 1-2.

procedures, and regulatory schedule for this proceeding. On February 17, 2009, Movant filed a Reply Memorandum to KRWC's Memorandum in Opposition ("Reply").⁷

II.

Discussion

A.

Motion to Enlarge Time

HAR § 6-61-23(a)(2), governing enlargements of time based upon excusable neglect, provides:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

.

- (2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any

⁷The commission's rules of practice and procedure do not authorize the filing of a movant's reply to a memorandum in opposition to intervene. Thus, because the commission did not grant Movant leave to file a reply, the commission will only give Movant's Reply "the appropriate weight in its consideration of its Motion to Intervene." In re KRWC Corp., dba Kohala Ranch Water Co., Docket No. 05-0334 ("Docket No. 05-0334"), Order No. 22454, filed on May 5, 2006, at 3 n.3. In its Reply, Movant counters that: (1) consistent with the commission's no-bounce rule set forth in HAR § 6-61-19, its filing should be accepted as timely without the need to find excusable neglect; (2) it was plainly and simply an oversight that when the original and copies were sent that a check for the filing fee was not included; (3) KRWC is unable to point to any prejudice and clearly cannot establish bad faith or willingness in the clerical oversight involved herein; and (4) its Motion to Intervene complies with HAR § 6-61-55(b).

action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.

HAR § 6-61-23(a)(2).

As noted by the commission in Docket No. 05-0334, KRWC's previous rate case:

. . . the commission may allow [the movant] leave to file a motion to intervene only upon a showing of "excusable neglect." The excusable neglect standard is a strict standard requiring a showing that the failure to timely file with the commission was due to circumstances beyond [the movant's] control. Lack of legal sophistication and ignorance of the law do not constitute excusable neglect. Pogia v. Ramos, 10 Haw. App. 411, 416, 876 P.2d 1342 (Haw. Ct. App. 1994).

Docket No. 05-0334, Order No. 22983, filed on October 27, 2006, at 8-9 (footnote and citations therein omitted).

Without waiving its contention that it timely filed its Motion to Intervene "that was erroneously returned by the Commission for failure to include a payment of \$15.00, . . . Movant submits that the rejection of that filing with the Commission was the result of excusable neglect."⁸ In support of its motion, Movant's counsel declares:

.

2. On January 22, 2009, Movant's Motion To Intervene was mailed to the Public Utilities Commission with an original and 10 copies, inadvertently omitting the \$15.00 filing fee. A true copy of the cover letter is attached as Exhibit "1". The package and envelope were ready the day before and the postmark is dated January 21, 2009, a true copy of which is attached hereto as Exhibit "2".

⁸Motion to Enlarge Time, at 2-3.

3. On January 28, 2009, our office received a letter from the Administrative Director of the Public Utilities Commission returning our package not filed, a true copy of the letter is attached as Exhibit "3".

4. On January 29, 2009, our office [re-sent] the package with the \$15.00 filing fee included, a true copy of which is attached as Exhibit "4".

5. On February 4, 2009, we received back from the Commission a receipt and copy of the Motion To Intervene filed on February 2, 2009.

6. To my knowledge, none of the parties to this proceeding would be prejudiced by the filing of the Motion on February 2, 2009.

Declaration of Counsel, dated February 6, 2009, at 1-2.

In sum, Movant contends that its Motion to Intervene was initially not accompanied by a check for the filing fee due to an inadvertent administrative error that was promptly corrected; no significant delay resulted from this clerical error; there is no basis for a claim of prejudice by the Parties; the delay in paying the \$15 filing fee should not preclude Movant from exercising its statutory right to submit its position by intervention when the filing was otherwise timely; and "there is no provision in the Administrative Rules that authorize[s] the rejection of such a Motion for that reason, and the Movant could not in any case have anticipated clerical rejection of the Motion for that oversight."⁹

⁹Motion to Enlarge Time, at 3.

KRWC, by its Memorandum in Opposition, objects to the requested enlargement of time, contending that: (1) Movant has failed to demonstrate excusable neglect, as required by HAR § 6-61-23(a)(2); and (2) any decision to waive the filing deadline or excuse Movant's failure to meet the intervention deadline date would be unfair and unduly prejudicial to KRWC. Lastly, in the event that the Motion to Intervene is considered timely by the commission, KRWC further asserts that such motion "clearly fails to satisfy the intervention requirements set forth in HAR § 6-61-55, and that the allegations raised in the motion are not allegations that are reasonably pertinent to and do not unreasonably broaden the issues already presented, as required under HAR §6-61-55(d). Accordingly, the February 2, 2009 Motion [to Intervene] should be denied on the merits as well."¹⁰

Upon review, the commission notes as follows:

1. KRWC filed its Application on November 12, 2008.
2. The commission's Notice of Public Hearing was published in five newspapers, including the Hawaii Tribune-Herald and West Hawaii Today, on December 24, 2008, January 7, 2009, and January 14, 2009. The Notice of Public Hearing clearly states that "[a]ny motions to intervene or participate in this proceeding shall be filed with the Commission by January 26, 2009."

¹⁰Memorandum in Opposition, at 2 (emphasis in original); see also id. Section IV.A, at 8-18.

3. At least two members of the association submitted written comments and appeared and testified at the public hearing held by the commission on January 15, 2009, at the Waimea Civic Center.

4. In Docket No. 05-0334, KRWC's previous rate case, Movant's timely motion to intervene in that proceeding included the \$15 filing fee, as required by HAR § 6-61-24(4).¹¹

Here, by its own volition, Movant chose to wait until the deadline date in attempting to timely file its Motion to Intervene. Moreover, Movant was readily aware of the requirement to submit its payment for the requisite filing fee, having properly done so in KRWC's previous rate case proceeding, Docket No. 05-0334. That Movant was unsuccessful in timely filing its Motion to Intervene due to its decision to wait until the deadline date in attempting to file its motion, together with its asserted inadvertent administrative error, do not rise to the level of excusable neglect under HAR § 6-61-23(a)(2).¹² Instead, the timely filing of a motion to intervene, with the accompanying

¹¹See attachments herein from Docket No. 05-0334: (1) letter of transmittal, transmitting to the commission a motion to intervene and the corresponding \$15 filing fee; (2) cover page of the motion to intervene, timely filed on March 17, 2006; and (3) a copy of the commission-issued receipt for the \$15 filing fee.

¹²See, e.g., Docket No. 05-0334, Order No. 22983, filed on October 27, 2006, at 9 n.25 (citing to In re Puuwaawaa Waterworks, Inc., Docket No. 03-0369, Order No. 21021, filed on June 2, 2004, finding that an underestimation of the time it takes for a mail delivery did not constitute excusable neglect) (citing to In re Laie Water Co., Inc., Docket No. 00-0017, Order No. 17942, filed on August 2, 2000, ignorance of the rules governing the practice and procedures before the commission, or

\$15 filing fee, were matters within Movant's control.¹³ The commission, thus, denies Movant's Motion to Enlarge Time.

In doing so, the commission also rejects Movant's contention that "[t]here is no basis for a claim of prejudice by the Applicant or other parties to this proceeding."¹⁴ Here, no timely motions to intervene or participate were filed by any interested persons. Thus, the Parties submitted their proposed Stipulated Procedural Order for the commission's review and consideration on February 4, 2009, and the commission subsequently approved and issued the Stipulated Procedural Order on February 11, 2009. The stipulated regulatory schedule, as approved by the commission, contemplates the issuance of a proposed decision and order within six months from the filing date of KRWC's complete Application, i.e., by May 12, 2009, consistent with HRS § 269-16(f)(3), in the event that no person is permitted to intervene.¹⁵ Accordingly, the granting of Movant's motions in this proceeding where no timely motions to intervene were filed by the January 26, 2009 deadline date mistakes construing such rules, do not constitute excusable neglect).

¹³Movant's failure to timely its motion to intervene, with the accompanying \$15 filing fee, is especially notable when its Motion to Intervene, filed on February 9, 2009, is substantially similar in content to its previous motion to intervene filed on March 17, 2006 in Docket No. 05-0334.

¹⁴Motion to Enlarge Time, at 3.

¹⁵Conversely, "[i]f the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed[.]" HRS § 269-16(f)(3).

will have the effect of prejudicing KRWC's right under HRS § 269-16(f)(3) to a proposed decision and order by May 12, 2009.¹⁶ Such action, in turn, will appear to unduly delay this proceeding.¹⁷

Lastly, contrary to Movant's assertion as set forth in its Reply, the commission finds inapplicable herein HAR § 6-61-19.¹⁸ Under a plain reading of HAR § 6-61-19, the scope of this rule is limited to applications filed with the commission.¹⁹ By contrast, the motion that Movant attempted to

¹⁶See Act 168, Session Laws of Hawaii 2004 (the intent of Act 168, codified at HRS § 269-16(f), is to streamline the rate review process for public utilities with annual gross revenues of less than \$2 million; in this regard, the commission must make every effort to issue its proposed decision and order within six months from the filing date of the utility's complete application, "provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene.").

¹⁷HAR § 6-61-55(b)(7) (the extent to which the intervenor's participation will broaden the issues or delay the proceeding).

¹⁸HAR § 6-61-19 states:

Defective documents. Any application filed with the commission, which is not in compliance with these rules, commission orders, other applicable rules, or statutes shall be accepted by the chief clerk and filed. The mere fact of filing shall not waive any failure to comply with this chapter or any other legal requirement. The commission may require the amendment of any application or entertain timely motions by the parties in connection therewith.

HAR § 6-61-19.

¹⁹As articulated by the Hawaii Supreme Court ("Court"):

The general principles of construction which apply to statutes also apply to administrative rules. As in statutory construction, courts look first at an administrative rule's language. If an administrative rule's language is unambiguous, and its literal application is neither inconsistent with the policies of the statute the

file on January 26, 2009 did not constitute an application under HAR § 6-61-19.²⁰

Accordingly, for the foregoing reasons, the commission denies the Motion to Enlarge Time.

B.

Motion to Intervene

As the commission has denied the Motion to Enlarge Time, the Motion to Intervene is moot and therefore should be dismissed.

However, even if the commission were to have allowed an enlargement of time, it would have denied the Motion to Intervene. The standard for granting intervention is set forth in HAR § 6-61-55, which requires the movant to state the facts and reasons for the proposed intervention, and its position and interest thereto. HAR § 6-61-55 provides:

§6-61-55 Intervention. (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24,

rule implements nor produces an absurd or unjust result, courts enforce the rule's plain meaning.

Int'l Bhd. of Elec. Workers v. Hawaiian Tel. Co., 68 Haw. 316, 323, 713 P.2d 943, 950 (1986) (citations omitted); in accord In re Doe Children, 105 Hawai'i 38, 53, 93 P.3d 1145, 1160 (Haw. 2004); and In re Wai'ola O Moloka'i, Inc., 103 Hawai'i 401, 425, 83 P.3d 664, 688 (Haw. 2004).

²⁰According to the Court, an administrative agency's interpretation of its own rules is entitled to deference unless it is plainly erroneous or inconsistent with the underlying legislative purpose. In re Doe Children, 105 Hawai'i at 53, 93 P.3d at 1160; In re Wai'ola O Moloka'i, Inc., 103 Hawai'i at 425, 83 P.3d at 688; and Int'l Bhd. of Elec. Workers v. Hawaiian Tel. Co., 68 Haw. at 322, 713 P.2d at 950.

section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.

(b) The motion shall make reference to:

- (1) The nature of the applicant's statutory or other right to participate in the hearing;
- (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
- (3) The effect of the pending order as to the applicant's interest;
- (4) The other means available whereby the applicant's interest may be protected;
- (5) The extent to which the applicant's interest will not be represented by existing parties;
- (6) The extent to which the applicant's participation can assist in the development of a sound record;
- (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
- (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and
- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

(c) The motion shall be filed and served by the applicant in accordance with sections 6-61-21 and 6-61-57.

(d) Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

HAR § 6-61-55. Intervention "is not a matter of right but is a matter resting within the sound discretion of the commission." In re Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975).

With respect to the merits of the Motion to Intervene, the commission is not convinced that Movant's allegations are reasonably pertinent to the issues presented in this proceeding. Here, Movant asserts that: (1) it is a planned community association/subdivision; and (2) its interest in intervening in this proceeding is unique and differs from the general public's in that it maintains the only certified Firewise safety program in the State, and as such, "requires its constituent homeowners to landscape not less than 25% of their property and maintain[] common area service for those homeowners under a Declaration of Covenants, Conditions and Restrictions as amended."²¹ While the commission acknowledges that Movant was allowed participation status in Docket No. 05-0334 limited to the issue of the Firewise safety program, the commission would not find intervention or even participation status appropriate here.

In the commission's view, the requirement that Movant's homeowners must abide by certain covenants, conditions, and restrictions, including the requirement that the homeowners landscape not less than twenty-five percent of their property, does not constitute a sufficient basis for intervening in this proceeding.²² Likewise, the commission finds that Movant's contention that the development of a future subdivision,

²¹Motion to Intervene, at 3.

²²According to Movant, the Firewise safety program also "includes irrigation of common area plantings that require not less than 600,000 gallons of water per month[.]" Motion to Intervene, at 5.

Heathers II, raises significant questions with respect to the adequacy of the water supply within the aquifer, does not constitute a sufficient basis for intervention.²³

Instead, the commission reaffirms its previous finding in Docket No. 05-0334 that Movant "does not represent an interest that is distinct from the interests statutorily represented by the Consumer Advocate. The concerns it states relating to the

²³KRWC, in response, asserts:

. . . . Movant's allegations that the "Heathers II" subdivision raises "significant questions" with respect to "the adequacy of water supply within the aquifer" are clearly irrelevant and not pertinent to the ratemaking issues presented in this proceeding, and would not effectively assist the Commission in developing a sound record. Although water capacity issues may be relevant for a Certificate of Public Convenience and Necessity proceeding under HRS § 269-7.5, these types of issues are clearly not relevant for general rate cases under HRS § 269-16. In fact, allowing Movant to participate and raise these types of issues in this proceeding would unreasonably broaden the issues, unduly delay the proceeding, and deter the Commission from ensuring the "just, speedy and inexpensive determination" of this proceeding.

Memorandum in Opposition, at 15-16 (footnotes, text, and citations therein omitted).

Here, the commission notes that KRWC's Tariff Rule II.1, Availability of Service, addresses Movant's concern with respect to the adequacy of the water supply within KRWC's service territory:

Any prospective Customer whose premises are within the service limits established by the Company and adjacent to a distributing main, where pressure conditions permit, may obtain water service provided that the Company has a sufficient water supply developed for domestic use and for fire protection to take on new or additional service without detriment to those already served. The Customer shall be responsible for providing separate systems for potable and non-potable water uses within its premises when required by the Company.

Tariff Rule II.1 (emphasis added).

effects of the Application upon its interests are those that the Consumer Advocate historically reviews and examines, pursuant to the obligations imposed under HRS § 269-54."²⁴ In essence, the Consumer Advocate represents, protects, and advances the interests of all consumers of public utility services,²⁵ and as such, Movant's interests, including those of its members, are adequately represented by the Consumer Advocate. In any event, the commission further notes that Movant's Firewise safety program is documented in the commission's records and well known to the commission.²⁶

²⁴Docket No. 05-0334, Order No. 22454, at 5. In Docket No. 05-0334, the commission denied Movant's motion to intervene, and instead, on its own motion, named Movant as a participant, limited to submitting written testimonies on the Firewise safety program. Movant's interest in Docket No. 05-0334 largely arose out of KRWC's initial proposal to establish a tiered usage rate structure, whereby customers who used more water in excess of certain thresholds would pay a higher monthly usage rate once the designated monthly usage threshold was exceeded. Ultimately, the proposed tiered usage rate structure was not adopted by the parties or the commission. Instead, the single monthly usage rate structure was allowed to continue in effect by the commission. See Docket No. 05-0334, Decision and Order No. 23404, Section II.F, Rate Design, at 27-30.

Here, by contrast, in this proceeding (Docket No. 2008-0283), KRWC has not proposed a tiered usage rate structure. Instead, KRWC proposes to increase the single monthly usage rate from \$5.635 per thousand gallons ("TG") to \$8.4907 per TG.

²⁵HRS § 269-51.

²⁶See, e.g., Docket No. 05-0334, Order No. 22454, Section II.A.1, at 3-6; Written Testimony of Fabio Franzo and Exhibits A - G, filed on June 30, 2006; and Decision and Order No. 23404, filed on May 1, 2007, at 4 n.7; and Docket No. 2008-0283, public hearing comments of Robert H. Sterne Jr. and Diana Bonnici; and Motion to Intervene. In re Hawaiian Elec. Co., Inc., Docket No. 2008-0329, Order Denying Life of the Land's Motion to Intervene, filed on February 10, 2009, at 10 (the movant's concerns with the electric utility's proposed use

In conclusion, were it to decide the Motion to Intervene, the commission would find that Movant has not convincingly shown that its participation as an intervenor herein will assist the commission in developing a sound record under HAR § 6-61-55(b)(6); and that Movant's allegations do not appear reasonably pertinent to the issues presented in this proceeding under HAR § 6-61-55(d), and its intervention would unduly delay this proceeding under HAR § 6-61-55(b)(7).

III.

Orders

THE COMMISSION ORDERS:

1. Movant Kohala By the Sea Community Association's Motion to Enlarge Time, filed on February 9, 2009, is denied.

2. Movant Kohala By the Sea Community Association's untimely Motion to Intervene, filed on February 2, 2009, is dismissed.

of biofuels as a fuel source for the generation of electricity are documented in the commission's records and well known to the commission).


DONE at Honolulu, Hawaii

FEB 27 2009


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2008-0283.laa

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PUBLIC UTILITIES
COMMISSION

2006 MAR 17 P 1:28

FILED

LETTER OF TRANSMITTAL

DATE: March 16, 2006

TO: PUBLIC UTILITIES COMMISSION
465 South King Street, Room #103
Honolulu, HI 96813
VIA HAND DELIVERY

CASE NAME: IN THE MATTER OF THE APPLICATION OF:
KRWC CORPORATION, dba KOHALA RANCH WATER COMPANY
FOR APPROVAL OF RATE INCREASES AND REVISED RATE SCHEDULES

DOCKET NO.: 05-0334

DOCUMENTS:

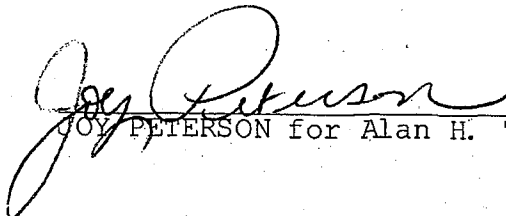
ORIGINAL + 10 COPIES OF:

KOHALA BY THE SEA COMMUNITY ASSOCIATIONS' MOTION TO INTERVENE;
CERTIFICATE OF SERVICE

[1] Original [10] Copies [] Certified copies

PLEASE PROCESS AS INDICATED:

X PLEASE FILE; ENCLOSING FILING FEE \$15.00 CK #4639
 X RETURN TWO (2) FILE-STAMPED COPIES VIA ENCLOSED ENVELOPE
 X WE HAVE SENT TWO (2) COPIES TO THE CONSUMER ADVOCACY DIVISION AND
ONE (1) COPY TO THE APPLICANT PRIOR TO THIS FILING.


JOY PETERSON for Alan H. Tuhy, Esq.

cc: client

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LAW OFFICES OF ALAN H. TUHY

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Telephone: (808) 329-5678

Attorney for Movant Kohala By
The Sea Community Association

PUBLIC UTILITIES
COMMISSION

2006 MAR 17 P 1:28

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SKd/cpa
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sl/da
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BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

IN THE MATTER OF THE
APPLICATION OF:

KRWC CORORATION, dba KOHALA
RANCH WATER COMPANY

FOR APPROVAL OF RATE
INCREASES AND REVISED RATE
SCHEDULES

) DOCKET NO. 05-0334
)
)
)

) KOHALA BY THE SEA COMMUNITY
) ASSOCIATION'S MOTION TO
) INTERVENE; CERTIFICATE OF
) SERVICE
)
)
)
)

KOHALA BY THE SEA COMMUNITY ASSOCIATION'S MOTION TO INTERVENE

COMES NOW Kohala By the Sea Community Association, a non-profit corporation ("Movant"), through its attorney above-named, and pursuant to Hawaii Administrative Rules ("HAR"), Chapter 6-61, and HRS Sec. 269-16, respectfully moves the Public Utilities Commission ("Commission") to allow your Movant to intervene and become a party to all proceedings, including a contested case hearing as authorized by law, pertaining to the Application of KRWC Corporation, dba Kohala Ranch Water Company ("Applicant") for Approval of Rate Increases and Revised Rate Schedule.

STATE OF HAWAII
OFFICIAL RECEIPT

PUBLIC UTILITIES COMMISSION

No. 14312

Department or Agency

DATE:

3/17/06

20

RECEIVED from

Kohala By the Sea Comm. Assn.

fifteen dollars & no cents

DOLLARS

Det. 05-0334 motion to intervene

\$ 15.00 of acct # 4639

(Law Offices of Alan Thuy)

Authorized Signature

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

WILLIAM L. MOORE, ESQ.
KRWK CORPORATION, dba
KOHALA RANCH WATER COMPANY
59-916 Kohala Ranch Road
Kamuela, HI 96743

KENT D. MORIHARA, ESQ.
KRIS N. NAKAGAWA, ESQ.
SANDRA L. WILHIDE, ESQ.
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MORIHARA LAU & FONG LLP
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Honolulu, HI 96813

Counsel for KRWK CORPORATION, dba
KOHALA RANCH WATER COMPANY

SANDRA LEE KUNIMOTO
CHAIRPERSON
DEPARTMENT OF AGRICULTURE
1428 S. King Street
Honolulu, HI 96814

Certificate of Service

Page 2

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ATTORNEY GENERAL OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 Queen Street
Honolulu, HI 96813

Counsel for the STATE OF HAWAII,
DEPARTMENT OF AGRICULTURE

ALAN H. TUHY, ESQ.
LAW OFFICES OF ALAN H. TUHY
75-5533A Kealia Street
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Counsel for Movant KOHALA BY THE SEA COMMUNITY ASSOCIATION